

96
No. 9(1)81-6Lab./1482.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s Haryana Foundry and Sewing Machine Works Chooma Road, Gurgaon.

**BEFORE SHRI BANWARI LAL DALAL, PRESIDING OFFICER, LABOUR COURT, HARYANA,
ROHTAK**

• **Reference No. 140 of 1979**

between

Shri Gobind Lal, Workman and the management of M/s. Haryana Foundry and Sewing Machine Works, Chooma Road, Gurgaon.

Present.—No one for either side.

AWARD

This reference has been referred to this court by the Hon'ble Governor,—*vide* his order No. ID/GGD/24/30809, dated 5th July, 1979 under section 10(i)(c) of the I.D. Act for adjudication of the dispute existing between Shri Gobind Lal, workman and the management of M/s Haryana Foundry and Sewing Machine Works, Gurgaon, The term of the reference was :—

Whether the termination of services of Shri Gobind Lal was justified and in order? If not, to what relief is he entitled?

On receipt of the order of reference notices as usual were sent to the parties. The parties appeared in response to the second notice issued to them on 14th September, 1979, filed their respective pleadings and the allowing issues were framed on the basis of the pleas of the parties :—

1. Whether the workman left the services on his own accord after receiving full and final money?
2. Whether the termination of services of the workman is justified and in order? If not, to what relief is he entitled?

The management examined Shri Ram Dass, Manager respondent as their witness and closed their case. The applicant/workman examined himself and Shri Jagan Nath as his witnesses and closed his cases. The parties were provided opportunity for arguments but they did not address arguments and the case was reserved for orders. I decide issues as under on the basis of the evidence on the record of the file.

Issue No. 1 & 2.—The version of the management is that the workman left the services of the respondent on 8th August, 1978 and received his full and final dues while the workman has alleged that his services were terminated by the management without assigning any reason. No charge-sheet or notices was issued to him and as such his termination was illegal and Act of unfair labour practice.

The management witness deposed that the workman was employed as daily wage worker at Rs. 10 per day and he received his full and final payment,—*vide* Ex. MW-1/1 on 8th August, 1978 and left the services on his own accord. The photocopy of the attendance register for the month of August, 1978 is Ex. MW-1/2 and Gobind Ram is the same person as Gobind Lal workman concerned. The workman never approached them for re-employment nor any notice was served on the management during the period from 8th August, 1978 to 4th April, 1979 the date of demand notice. The management never terminated his services. In his cross-examination the witness has given out that the management stated before the Conciliation Officer that they were ready to take the workman back on duty. He has further stated that certificate Ex. W-1 was issued to the workman by their partner. The witness denied the suggestion as incorrect that there was union in their factory and Shri Gobind Lal was the Secretary of that union and on account of his trade union activities his services were terminated.

The workman has stated that the management did not pay any compensation to him at the time of termination nor he was served any notice or charge-sheet and even his salary for four months was not paid to him. He admitted in his cross-examination that he served the demand notice on 4th April, 1979 while he was terminated on 8th August, 1978. He happened to go to the management in connection with his salary but did not ask the management to reinstate him during the period from 8th August, 1978 to 4th April, 1979. He further stated that he did not hold any office of the union. He admitted that Ex. W-1 was his experience certificate and the same was issued on 16th February, 1979 and Ex. MW-1/1 bore his signatures. He has further stated that he filed an application before the Authority under the Payment of Wages Act for the claim of four months salary but he was not aware what happened to that application. He denied the suggestion that he left the services on his own accord and was a daily wager and settled his dues on 8th August, 1978.

The admission of the workman that he was issued certificate Ex. W-1 and his signatures on Ex. MW-1/1 and his statement that he never asked the management for reinstatement and went to the management for payment of his salary prior to serving the demand notice, dated 4th April, 1979 for me to reach to an irresistible conclusion that the workman left the service of the management on 8th August, 1978 and received his dues,—*vide* Ex. MW-1/1. The certificate Ex. W-1 clearly mentions this fact that he worked for one year from 8th September, 1977 to 8th August, 1978 and left with his own accord. The version of the workman that his services were terminated on account of trade union activities is an afterthought as neither his demand notice nor his comments filed before the Conciliation Officer find any mention of the same. I therefore hold that the workman left his services on his own accord and received his full and final dues. The management never terminated his services. The workman is therefore not entitled to any relief. The reference is answered and returned accordingly.

Dated the 8th December, 1981.

BANWARI LAL DALAL,
Presiding Officer,
Labour Court Haryana, Rohtak.

Endst. No. 4242 dated the 14th December, 1981

Forwarded (four copies), to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the I.D.Act.

BANWARI LAL DALAL,
Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 9(1)81-6Lab./14828.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workmen and the managements of Notified Area, Delhi.

BEFORE SHRI BANWARI LAL DALAL, PRESIDING OFFICER, LABOUR COURT, HARYANA,
ROHTAK

Reference No. 240 of 78

between

Shri Des Raj Moharrir, workman and the management of Notified Area Committee, Ladwa (Kurukshetra)

Present.— No one for the workman.

Shri Surinder Kaushal for the management.

AWARD

This reference has been referred to this court by the Hon'ble Governor,—*vide* his order No. ID/FD/14-78/38669 dated 24th August, 1978 under section 10(i)(c) of the I.D. Act for adjudication of the dispute existing between Shri Des Ram Moharrir, workman and the management of M/s. Notified Area Committee, Ladwa. The term of the reference was :—

Whether the termination of services of Shri Des Raj, Moharrir, was justified and in order? If not to what relief is he entitled?

On the receipt of the order of reference notices as usual were sent to the parties. The parties appeared in response to the notices on 25th September, 1978, filed their respective pleadings and the issues were framed on the basis of the pleas of the parties. The management was asked to adduce their evidence but on the one pretext or the other the same could not be recorded up-till 11th September, 1981. The *ex parte* proceedings were held against the workman on 24th August, 1981 when no one appeared on his behalf. The Secretary Shri B.R. Sukhla was examined as MW-2. MW-1 is the clerk of the office of Registrar, Punjab and Haryana High Court. MW-2 has deposed that the workman remained absent in the month of November, December, 1971 and further remained absent from October, 1972 to May, 1973. The name of the workman was struck off from the rolls in the month of June, 1973 and it was considered that the workman left his services on his own accord. The workman was issued a letter Ex. M-1 informing the workman about his absence. He replied the same,—*vide* Ex. M-2 and also,—*vide* Ex. M-3. The workman never reported for duty and continued to remain absent. He filed a claim for wages for the period of absence before the authority under the Payment of Wages Act and then appeal was preferred before the Appellate Authority. The copy of the order of the Appellate Authority under Payment of Wages Act is Ex. M-X wherein the Appellate Authority had held that the respondent was wilfully absent from his duty during the wage period in dispute. The workman has preferred a civil writ petition before the Honourable High Court against the order of the Appellate Authority Ex. M-X which is still pending.

I have no reason to disbelieve the *ex parte* statement of the management witness MW-2 made on oath, particularly when the workman has not cared to pursue his demand leading to this reference. Relying on his statement I hold that the workman remained absent for a long period from 1st October, 1972 to May, 1973 and as such lost his lien on the job and he was rightly deemed to have left the services of the management on his own accord. This is not a case of termination but of self abdication. The workman is not entitled to any relief. The reference is answered and returned accordingly.

Dated 10th December, 1981.

BANWARI LAL DALAL,

Presiding Officer,
Labour Court, Haryana, Rohtak.

Endst. No. 4241, dated the 14th December, 1981.

Forwarded (four copies) to the Secretary to Government of Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the I.D. Act.

BANWARI LAL DALAL,

Presiding Officer,
Labour Court, Haryana, Rohtak.

No. 9(1)81-6Lab./14829.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s. The Rohtak Distt. Co-op. Milk Products Ltd., Rohtak.

BEFORE SHRI BANWARI LAL DALAL, PRESIDING OFFICER, LABOUR COURT, HARYANA,
ROHTAK

Reference No. 194 of 78

between

Shri Tek Chand, workman and the management of M/s The Rohtak District Co-op. Milk Products Union, Ltd., Rohtak.

Present.—Shri Gurdial Singh along with the workman.

No one for the management.

AWARD

This reference has been referred to this court by the Hon'ble Governor, — *vide* his order No. ID/RTK/386-A-76/33830 dated 19th July, 1978 under section 10(1)(c) of the I.D. Act for adjudication of the dispute existing between Shri Tek Chand, workman and the management of M/s. The Rohtak District Co-op. Milk Producers Union Ltd., Rohtak. The term of reference was :—

Whether the termination of services of Shri Tek Chand was justified and in order ? If not, to what relief is he entitled ?

On the receipt of the order, of reference notices as usual were sent to the parties. The parties appeared on 1st September, 1978 in response to the notices filed their respective pleadings and the following issues were framed on the basis of the same on 4th June, 1979 :—

1. Whether the reference is bad in law as the state Government has rejected the claim of the workman for reference previously ?
2. Whether the services of the workman were terminated after a proper domestic enquiry in accordance with the principle of natural justice ?
3. If not, as per reference ?

The management examined Shri Ram Sarup, Assistant office of Latcur Commissioner, Haryana, Chandigarh as MW-1 and Shri Ramesh Kumar, Accountant management as MW-2 on issue No. 1 & 2 which was

to be treated preliminary. *Ex parte* proceedings were held against the management on 2nd June, 1980. The same was set aside subject to the payment of Rs. 50 as cost on 2nd July, 1980. The *ex parte* statement of Shri Bhagwan Singh, clerk of the office of Labour Officer, Bhiwani was recorded on 5th August, 1980 as workman witness WW-1. The management moved an application for recalling the witness WW-1 for cross examination by them. As the service of WW-1 has been terminated by the government the Head Clerk Sri Hari Chand of the office of Labour Officer, Bhiwani appeared as the summon and witness with the accord who was bound down for 3rd December, 1980. The statement of the summoned witness Sri Hari Chand could not be recorded on 3rd December, 1980 as the parties were not prepared for the same and he was not paid the expenses which were to be borne by the management. The management did not appear on the date fixed and sought an adjournment which was granted. On 3rd April, 1981 also no one appeared on behalf of the management and *ex parte* proceedings were held against the management. The workman Shri Tek Chand appeared as WW-2. Arguments were heard 3rd June, 1981. I decide the issues as under :—

Issue No. 1.—The management has alleged in their written statement that the reference is bad in law as the management was not given the opportunity of being heard by the government before referring the dispute for adjudication when once the government rejected the demand,—*vide* its letter Ex.M-1 produced by the summoned witness MW-1 Shri Ram Sarup Assistant of the office of Labour Commissioner, Haryana, Chandigarh. In his cross-examination MW-1 has given out that an appeal from the workman which was forwarded to the Labour Officer-cum-Conciliation Officer, Sonepat,—*vide* letter Ex.W-1 The Labour Officer issued notices to the Parties,—*vide* Ex. W-2 and sent his final report Ex.W-3. After receipt of Ex.W-3 reference No. ID/RTK/386-A/76/33830 dated 19th July, 1978 was made. He defied any personal knowledge about the receipt of notices Ex. W-2 by the management though he has stated that copy of Ex. W-2 was received in their office and it was presumed that the same must have been sent to the addressee i.e. the management. MW-2 has also stated that the management received only Ex. M-1 from the Joint Secretary Labour and Employment Department and no letter either from the Labour Commissioner, Haryana or from Labour Officer-cum-Conciliation Officer Sonepat asking the management to attend conciliation meeting on 2nd January, 1977 and 21st February, 1978 were ever received by them. From the statement of MW-1 and WW-1 which corroborated the statement of WW-2 it is clear that the management was given opportunity of bearing—*vide* letter Ex. WW-1/9 and WW-1/10 and Ex. W-2 and as such reference is not bad in law on this count. This issue is accordingly decided against the management.

Issue No. 2.—The management did not adduce any evidence in support of their allegation that the services of the workman were terminated after holding a proper domestic enquiry in accordance with the principle of natural justice. The management has therefore failed to discharge the onus placed on them. The issue is accordingly decided against the management.

Issue No. 3.—The management did not care to lead any evidence before me to prove the charge of workman remaining absent on the alleged dates and tampering with the record to cover up his absence. While the workman has stated on oath that during the dispute period he was working at Chilling centre, Kalanur and Manager of that centre issued a certificate to the effect that he was present and did his duty on the alleged dates. The certificate is Ex. WW-2/2. In the absence of any evidence from the side of the management to show the workman absent Ex. WW-2/2 is Ex. sufficient proof that the workman was on duty on the said dates. The termination of the workman is, therefore, neither justified nor in order. The workman is entitled to reinstatement with continuity of service and with full back wages. The reference is answered and returned accordingly.

Dated 10th December, 1981.

BANWARI LAL DALAL
Presiding Officer,
Labour Court Haryana, Rohtak.

Endst. No. 4240, dated 14th December 1981.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments' Chandigarh as required under section 15 of the I.D. Act.

BANWARI LAL DALAL,
Presiding Officer,
Labour Court Haryana, Rohtak.

No. 9(1)81-6Lab./4872.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer Labour Court, Faridabad in respect of the dispute between the workman and the management of M/s Sidana Engineering Works Plot No. 7 Sector 24, Faridabad.

IN THE COURT OF SHRI HARI SINGH, KAUSHIK, PRESIDING OFFICER,
LABOUR COURT, HARYANA, FARIDABAD
Reference No. 495 of 1980.

Between

Shri Ram Khilawan Chaudhry, Workman and the management M/s. Sidana Engineering Works, Plot No. 1717 Sector, 24, Faridabad.

Present.—Shri H.R. Dua for the workman.

Shri R.C. Sharma for the respondent management.

AWARD

This reference No. 495 of 1980 has been referred to this Court by the Hon'ble Governor of Haryana,—
 vide his order No. ID/FD/100-80/53990, dated 17th October, 1980, under section 10(i)(c) of the Industrial Disputes Act, 1947, existing between Shri Ram Khilawan Chaudhry, workman and the management of M/s. Sidana Engineering Works, Plot No. 171, Sector 24, Faridabad. The terms of the reference was :—

Whether the termination of service of Shri Ram Khilawan Chaudhry, was justified and in order ? If not, to what relief is he entitled ?

On receiving the reference notice were issued to the parties and the parties put their appearance and filed their pleadings. The case of the workman according to the demand notice and rejoinder is that he went home after the sanctioned leave from 5th May, 1980 to 22nd May, 1980 and fell ill on 18th May, 1980. For the illness he submitted the medical certificate from a competent and qualified doctor and after recovery from illness he reported for duty on 12th July, 1980 and the management gave a letter to explain being absent questioning the medical certificate and medical opinion. The reply was given to the chargesheet dated 15th July, 1980. The management did not accept the application out of the ulterior motive to harass him and terminated the services without holding any domestic enquiry. The order of the management was illegal, mala fide, arbitrary and unwarranted and against the principles of natural justice. The management was using the unfair labour practice so he has requested for reinstatement with full back wages and continuity of service.

The case of the respondent according to its written statement that the workman joined the service in July, 1979 and applied for leave which was granted upto 20th May, 1980. Thereafter he absented himself and sent a medical certificate dated 18th May, 1980 of Dr. M.N. Dass stating therein that he was suffering from dysentery and fever. The medical certificate did not disclose the recommendation for rest. The management wrote a letter dated 11th June, 1980 informing him that his leave cannot be granted further and he will be treated as absent and action will be taken accordingly and the letter was received by the workman. The management also wrote a letter dated 24th May, 1980, 11th June, 1980 and 27th June, 1980 and thereby informed him that he should report for duty otherwise action will be taken against him as per law and inspite of this the workman failed to report for duty and came to the factory on 17th December, 1980. The management issued him chargesheet on the same date and asked him to explain as to why he was absenting. The management was not satisfied with the explanation and informed him accordingly. The management is guided by the Model Standing orders and terms and conditions of the employment according to which action for remaining absent for such a long time were taken. Remaining absent for a long period is a mis-conduct on the part of the workman. The respondent has admitted the exchange of correspondence between the workman and the management in the written statement and stated that there was no necessity of holding any enquiry.

On the pleadings of the parties, the following issues were framed :—

1. Whether the workman abandoned his job by way of absenting himself for more than stipulated period ? If so, to what effect ?
2. As per reference ?

My findings issue-wise are as under :—

Issue No. 1.—On this issue the representative of the management argued that the workman was appointed,—*vide* Ex. M-1 on probation for 3 months and according to this appointment letter the workman could be removed according to the terms and conditions of para No. 4 of this appointment letter. The workman went home with sanction leave. The application for leave is Ex. M-2 and the workman demanded the advance from the respondent,—*vide* Ex. M-3 when he was proceeding on leave. The workman was on leave. The workman was on leave upto 20th May, 1980 and after that he did not return to join his duties. The workman sent Ex. M-5 application for extension of leave with medical certificate Ex. M-5/1 dated 18th May, 1980 which was received by the respondent and sent a letter dated 24th May, 1980 which is Ex. M-4 informing the workman to come to join his duties. He further argued that doctor did not recommend any rest according to certificate Ex. M-5/1 without which no extension can be given in the leave. The management again sent a letter dated 11th June, 1980 which is Ex. M-6 under registered cover, the postal receipt of which is Ex. M-6/1. On this letter the respondent received one telegram from the workman which is Ex. M-7 in which the workman had submitted that he is coming after two weeks. After this telegramme the respondent sent another letter dated 27th June 1980 which is Ex. M-8 under registered cover the acknowledgement and postal receipts of which are Ex. M-8/1 and M-8/2. The workman came in the factory on 12th July, 1980 and on the same day a letter was given to him by hand which is Ex. M-9 for explaining his position for his absent from duty. The workman filed his explanation on the same day which is Ex. M-10. The respondent again issued a letter dated 15th July, 1980 to the workman which Ex. M-11 for clearing his position about the medical certificate. The workman replied the same,—*vide* Ex. M-12 on the same day. After considering the reply of the workman the respondent management decided to remove the workman and issued the letter dated 17th July, 1980 which Ex. M-13 which was received by the workman and signed the same at mark "A". The respondent's representative argued that after so many exchanges of

correspondence between the management and the workman, the management has taken proper action according to law. He has referred citation 1956-II-LLJ Page 280 and 1957 LLJ-Page 226 in which it is decided that there is no necessity to give charge-sheet to the workman under the above circumstances when the workman has admitted all the correspondence relied upon by the respondent. According to the terms and conditions of service which is mentioned in para No. 4 of the appointment letter, was a serious misconduct to be absent from duty for more than stipulated period of ten days. The respondent-management had taken the right view according to the Model Standing Orders and he has referred his citation 1963-II-LLJ-638 and 1967-LLJ-83 for justifying the termination order by the respondent-management.

The representative of the workman argued on this issue that the respondent has taken no plea in the written statement and there is no pleadings of the respondent for the probation of the workman and without the pleadings the respondent could not argue and take the plea of arguments and he has cited AIR-1973-page 2650 Supreme Court for the same, and argued that without pleadings the same should not be considered as argument of the respondent. He further argued that the workman was a permanent employee of the respondent and he had completed 240 days according to the Industrial Disputes Act, and he was a permanent employee of the respondent with continuous service and the respondent should have held an enquiry against the workman before terminating the service. The workman went home after getting sanctioned leave which is admitted by the respondent from 5th May, 1980 to 20th May, 1980 and he fell ill on 18th May, 1980 at his home. As stated by the workman in his own statement as WW-1 he was admitted in the Civil Hospital on 19th May, 1980 and remained there upto 10th July, 1980. He sent the medical certificate Ex. M-5/1 and the application Ex. M-5. He argued that the workman is a lay man and knows nothing about the law. He simply informed the respondent about his illness. If he had known any thing on this matter there was no loss to him to write to join the duties for the leave, but when he received the letter from the respondent, dated 11th June, 1980 then he sent a telegram for mentioning the time of his coming for joining his duties that he is coming after two weeks which is mentioned in Ex. M-7. The respondent had objected the Medical Certificate Ex. M-5/1 as it is not from the competent authority, but on observing the medical certificate it is very clear that the medical certificate is issued from an MBBS doctor who is Assistant Surgeon in the Civil Hospital who is very competent and authorised person to issue the medical certificate. The workman after sending this telegram came in the factory with a fitness certificate, dated 10th July, 1980 when he was relieved from the medical hospital and came in the factory on 12th July, 1980. The respondent could not argue that the workman was absent without any information to the respondent. The workman informed the respondent before the expiry of his sanctioned leave. He was ready to come on duty but fell ill on 18th May, 1980 and in this condition when he is admitted in the civil hospital for the illness then how the workman come to join his duties and the workman informed the respondent time and again for his illness with authenticated proof. So the orders of termination are not proper in the eye of law. He has referred the citation 1980-LLJ Page 72-Santosh Gupta Vs. State Bank of India and argued that after continuous service if a man is terminated then under the law he is entitled for retrenchment compensation which the respondent has not done. The respondent had failed to comply with the provision of the law and the termination is bad in law.

Afetr hearing the arguments of both the parties and carefully going through the file, I am of the view that the arguments put forward by the respondent is not fair in this case. When the workman sent a medical certificate of a competent doctor and in time which the respondent admits in his written statement and other correspondence of the workman regarding his illness which is also admitted by the respondent. The workman had informed the respondent in time, and the respondent had not struck off the name of the workman after 10 days of the workman's absence according to the provision of the Model Standing Orders or para 4 of the appointment order Ex. M-1. If they had to take this action according to the Model Standing Orders and the terms and conditions of the appointment letter then they should have struck off the name of the workman after ten days on his absence when they have received the medical certificate and called the explanation of the workman after coming in the factory on 12th July, 1980 then they should have considered the case of the workman very sympathetically when he was ill. The illness is not in the hand of any human being. It comes and goes its own way. The workman had informed the respondent time and again about his conditions then it was not fault of the workman. The respondent cannot say that they received no intimation so his name was struck off from the roll. They should have given the opportunity to the workman to be heard or some enquiry should be held in this matter. Without holding the enquiry and deciding the matter against the workman, is not under the natural justice. The citations offered by the respondent are varied from the circumstances of this case. The plea of probation taken by the respondent at the stage of arguments cannot be considered as they had not taken in the pleadings and no evidence of the probation. So after going through the whole evidence of both the parties, I am of the view that this issue can not be decided in favour of the respondent management, so the issue is decided in favour of the workman.

Issue No. 2.—Issue No. 2 is as per reference.

After deciding issue No. 1 in favour of the workman, it is clear that the orders of termination made by the respondent are not good in view of the first plea taken by the respondent. When the plea taken by the respondent has been rejected by me then it is very clear that the order made on this plea can not hold good. So this issue is also decided in favour of the workman and against the respondent and the workman is entitled for his reinstatement with continuity of service and full back wages. No order as to costs.

This be read an answer to this reference.

Dated, the 2nd December, 1981.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana, Faridabad.

Endorsement No. 3400, dated 11th December, 1981

Forwarded (four copies) to the Commissioner and Secretary to Government of Haryana, Labour and Employment, Department, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,

Presiding Officer,
Labour Court, Haryana.
Faridabad.

No. 9(1)81-6Lab./14873.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workmen and the management of M/s. Celestial Engineering Works (P) Ltd., Plot No. 44 Sector 4, Faridabad.

**IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT,
HARYANA, FARIDABAD**

Reference No. 562 of 1980.

Between

**SHRI BISHAN SINGH SOLANKI, WORKMAN AND THE MANAGEMENT OF M/S. CELESTIAL
ENGINEERING WORKS (P) LTD., PLOT NO. 44, SECTOR 4, FARIDABAD**

Present—

- Shri K. L. Sharma for the workman.
- Shri R. C. Sharma for the respondent-management.

AWARD

This reference No. 562 of 1980 has been referred to this Court by the Hon'ble Governor of Haryana,—*vide* his order No. ID/FD/130-80/60143, dated 15th December, 1980, under section 40(i)(c) of the Industrial Disputes Act, 1947, existing between Shri Bishan Singh Solanki, workman and the respondent management of M/s. Celestial Engineering Works (P) Ltd., Plot No. 44, Sector 4, Faridabad. The terms of the reference was :—

Whether the termination of service of Shri Bishan Singh Solanki was justified and in order ? If not, to what relief is he entitled ?

On receiving this reference notices were sent to the parties which put their appearance in the court and filed their pleadings. According to the demand notice and claim statement the case of the workman is that he was appointed as Milling Man on 2nd December, 1979 at a salary of Rs. 400 per month and discharging his duty properly without any complaint from the respondent. The respondent abruptly terminated his service on 12th August, 1980 without any reason or cause due to workman's active participation in legitimate trade union activities. The action of the management is illegal and un-justified so the workman is entitled for his reinstatement with full back wages and continuity of service.

The case of the respondent according to their written statement is that the workman was appointed on 2nd December, 1979 as Millingman on probation, for six months, which stood extended automatically for further three months. The services of the workman were not required and therefore, terminated on 11th August, 1980. The termination is according to the terms and conditions of the employment and not due to the Trade Union activities as alleged. The workman is gainfully employed and therefore he is not entitled to any relief.

On the pleadings of the parties only one issue as per reference was framed :—

Whether the termination of services of the workman is proper, justified and in order ? If not, to what relief is he entitled ?

My findings on the issue is as under :—

Issue No. 1 :—

The representative of the respondent argued that according to Ex. M-1 the application and order of appointment, the workman was appointed on 2nd December, 1979 as Millingman at Rs. 400 on probation for six months which shall stand extended for three months in case he is not removed from the service. The work

of the claimant was not satisfactory during the period of his probation as stated by the witness of the respondent MW-2 Shri S.C. Tiyagi, Engineer in the respondent factory. He has stated in his statement that he verbally warned the workman so many times for his work and the claimant was terminated because he was junior most among the Millingmen. He argued that the workman was terminated,—*vide Ex. M-2* dated 11th August, 1980 and in the order it is very clear that the workman was terminated at the finishing of the period of probation. The workman has signed at mark "A" and "B" on Ex. M-1 and admitted the signature in his statement as WW-1 and the workman received the money order Ex. M-3 of the dues against the respondent. He has cited 1976-LIC-960 for no notice required to the probationer.

The workman representative argued that it is a system in most of the industries that they got signed the workman on a blank application form and puts them in their files and they fill the same if required, which is very clear by observing Ex. M-1. The order of appointment is left blank above and it is filled in a different ink than the signature of the manager or the date given on the order. The hand writing is also different which shows that this was a blank and filled up when the reference came in the Court. It remains with the management all times and they can fill it according to their own interest. The workman was not told at the time of appointment that he was appointed on probation as he has stated in his cross examination that he did not know whether he was appointed on probation otherwise on 2nd December, 1979, so the workman was not appointed on probation. He was appointed as permanent employee and working efficiently without giving any chance to the respondent to explain his position. The respondent did not warn him at any stage during this period. The respondent witness MW-2 had simply said that he warned the claimant verbally and not in writing. If his work was not satisfactory and up to the mark why the respondent did not call the explanation. The claimant organised the union in the factory which was got registered,—*vide Ex. W-1* dated 3rd October, 1980. Before this the union was working in the factory as stated by the claimant in his statement. The claimant has filed Ex. W-2, W-3, W-4 and W-5 the demand notice and complaint against the respondent to the Labour Officer which shows that the claimant was active in the union activities and was the General Secretary of the union. The respondent had threatened him so many times which the claimant has stated in his claim statement that the management has been threatening him openly that in case he did not finish the union he would be thrown out from the service. Hence he has been willingly and deliberately victimised by the management to curb down the union of the factory. So the workman was terminated due to his union activities and not because of his work was not satisfactory or he was on probation and his service was terminated after finishing the probation period. In the nine months the respondent did not give single warning letter to the workman that the work of the claimant was un-satisfactory and he was removed only due to the union activities.

After hearing the arguments of the parties and going through the file, I am of the view that the argument put forward by the representative of workman has some force because there is no proof on the file accept one witness has said about his verbal warnings. Nine months is a very long period and if the claimant was not working properly he should have warned in writing to make a proof of his not working properly. I also agree with the arguments on Ex. M-1 which is an appointment letter of the claimant. In my view the claimant should have given some notice or chargesheet to explain his position which is not given and his services were terminated abruptly. So the order of termination is not justified and proper. As stated by the respondent witness MW-1 Shri G. S. Pilley, Administrative Asstt. of the factory is closed from May, 1981. The fact has also admitted by the workman in his cross examination that the factory is closed from May, 1981. So the workman is entitled only his back wages other benefits from the date of termination to the date of closure and after that closure benefits from the date of closure i.e. May, 1981.

No order as to costs. This be read : n answer to this reference.

Dated 3rd December, 1981

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

Endorsement No. 3399, dated 11th December, 1981.

Forwarded (four copies) to the Commissioner and Secretary to Government of Haryana, Labour and Employment Department, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.